

## **Recent Fair Housing Developments:**

### **Landmark Court Settlement Reached on “Affirmative Duty” in Westchester County, New York Suit**

---

This landmark settlement is likely to have a significant impact on the way in which federal housing and community development funds are used throughout the United States, and it could lead to increased scrutiny of local government housing policies. It also signals a new commitment by HUD to assure that token efforts made by federal funding recipients to “affirmatively further fair housing” will not be acceptable.

The law suit was filed under the federal False Claims Act in 2006 by the Anti-Discrimination Center of Metro New York and the United States. It charged that Westchester County, a large suburb north of New York City, had falsely certified that it was complying with the requirement to “affirmatively further fair housing” in its applications for HUD Community Development Block Grant (CDBG) funds between the years 2000 and 2006. Federal law requires recipients of certain federal housing and community development funds to certify that they are affirmatively furthering the jurisdiction's commitment to fair housing by conducting an analysis of impediment to fair housing and by taking appropriate action to overcome those impediments. In particular, a recipient must analyze the impact of race and national origin on housing opportunities and choices within its jurisdiction.

The plaintiffs specifically alleged that Westchester chose not to analyze impediments to fair housing choice based on race or municipal resistance, and also chose not to take appropriate steps to overcome such impediments. In February 2009, the federal district court judge granted the plaintiffs' motion for partial summary judgment. The court ruled that Westchester had “utterly failed” to meet its obligation to affirmatively further fair housing through creation of equal housing opportunities for all persons in the predominately white municipalities within its jurisdiction. The court found that the county had accepted over \$52 million in CDBG funds in that time frame, but had failed to take affirmative steps to create more integrated housing while falsely or fraudulently representing to HUD that it was doing so. In August 2009 a settlement was reached to resolve the suit, and the settlement was approved by the county legislature in September 2009.

Under the broad settlement agreement, Westchester will in part conduct a new analysis of impediments to fair housing that examines barriers based on race or municipal resistance. It will also “ensure the development” of at least 750 units of affordable housing over the next seven years. At least 630 of those units must be in municipalities with an African-American population of less than 3%, and a Hispanic population of less than 7%, but not in census tracts that are more than 10% African-American or Hispanic. Over \$50 million will be paid by Westchester for the development of this affordable housing and in settlement of the claims against it. A court appointed independent monitor will oversee implementation of the settlement and provide regular progress reports to the court. Westchester also agreed to the appropriateness of taking legal action to compel compliance by any municipality which hinders or impedes the county's performance of the agreement. For more information regarding the provisions of the agreement, [click here to see the Settlement Order](#).

In early February 2010, Westchester County submitted its implementation plan as required to the federal court appointed monitor overseeing the county's compliance with the settlement order. Following his review of the plan, the monitor formally rejected it on February 11, 2010 based primarily on lack of specificity regarding accountability, time frames, and processes. He directed the county to make significant revisions to comply with the settlement requirements. A revised plan is expected on March 12, 2010.

Among the deficiencies indicated, the monitor found that the plan lacked any concrete strategies for developing the required 750 affordable units, and that it did not specify the process to be used for making funding allocation decisions. The plan also failed to include proposed timetables and benchmarks for certain checkpoint intervals, a concrete time frame for assessing potential properties for development, and a system for tracking the number of units in progress within different categories. Noting the settlement's requirement that the county use all means, including legal action, to overcome municipal resistance to the settlement's objectives, the monitor stated that the revised plan “should include a clear strategy for how the county will employ carrots and sticks to encourage compliance by municipal governments”, as well as a plan for monitoring local approval processes and cooperation. Finally, the monitor critiqued the county's fair housing outreach and education plan for its lack of detail.

This law suit and its settlement serve as a wakeup call for local government units to actively further fair housing by creating more integrated housing opportunities for people whose housing needs are underprovided locally, whether by reason of racial, ethnic, disability, familial status, or other discrimination. In April 2009, the Commonwealth of Massachusetts Department of Housing and Urban Development (DHCD) developed a comprehensive Affirmative Fair Housing Policy ([click here to view the Policy](#)) to carry out its affirmative duty, and to structure tools for strongly encouraging cities and towns to act positively towards overcoming deficiencies. That, too, provides a wake-up call to cities and towns in Massachusetts.

As in the case of other cities receiving federal funding for housing and community development, the City of Newton undertakes both an “Analysis of Impediments to Fair Housing” (most recently in 2005, with updates now being prepared), and a Consolidated Plan for housing and community development efforts (most recently in 2005, with updates now being prepared) every five years. In 2007 the City adopted a Comprehensive Plan that includes extensive housing and fair housing materials. In November 2008 the City adopted a Fair Housing Action Plan ([click here to view the Action Plan](#)). Collectively, those plans commit the City to the implementation of various action steps to combat housing discrimination and segregation.